S.B.Criminal Revision Petition No.238/2007

Karan Singh
V.
State of Rajasthan & Ors.

Date of Order :: 21st November, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Shambhoo Singh, for the petitioner.
Mr. Vishnu Kachhawaha, Public Prosecutor.
Mr. Rakesh Arora, for the respondents.

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This petition under Section 397 read with 401 Cr.P.C. is preferred to assail validity, correctness and propriety of the order dated 27.2.2007 passed by learned Additional Sessions Judge Bali accepting a revision petition preferred by the respondents No.2 and 3 to quash the order dated 31.10.2006 passed by learned Judicial Magistrate Ist Class, Sumerpur framing charges against them punishable for the offences under Sections 420 and 406 IPC.

In brief, facts of the case are that on 22.5.1995 the respondents No.2 and 3 executed a written agreement in favour of the petitioner to sale their part of agricultural land with the consideration of Rs.2,25,000/- and against that received a sum of Rs.1,20,000/- in cash from the petitioner. The rest amount of Rs.1,05,000/- was also received by them from the petitioner on 24.5.1996. In the agreement executed on 22.5.1995, it was specifically averred by the

respondents No.2 and 3 that the land in question is having no encumbrance and, thus, they were having all right to sale the same without hindrance. The agreement was not performed and ultimately it revealed that as a matter of fact the land in question was mortgaged with Punjab National Bank Branch, Sheoganj. The petitioner then lodged a first information report at Police Station Sumerpur in district Pali.

After regular investigation a police report was filed against both the respondents for the offences punishable under Sections 406 and 420 IPC. Learned Judicial Magistrate Ist Class, Sumerpur by an order dated 31.10.2006 on basis of police report framed charges against the respondents under Sections 420 and 406 IPC. The order aforesaid was challenged by the respondents No.2 and 3 by way of filing a revision petition before learned Additional Sessions Judge, Bali and that came to be accepted by order dated 27.2.2007 setting aside the order dated 31.10.2006 and discharging the respondents No.2 and 3 from the charges relating to offences punishable under Sections 420 and 406 IPC, hence this revision petition is preferred.

The contention advanced is that learned Additional Sessions Judge erred while treating the issue in question as a civil dispute in spite the fact that the intention of the respondents was to cheat the

petitioner by mentioning in the agreement to sale that the land in question was without having encumbrance.

I have examined the order impugned and also the record available.

From perusal of the agreement dated 22.5.1995 it is apparent that the respondents despite having the land in question encumbered stated as follows:-

> "यह हैं कि उक्त हमारे हिस्से की आराजी आपको बैचान से पूर्व किसी भी व्यक्ति को बैचान, बक्षीस, वसीयत, दान, गिरवी, आदि अन्य किसी भी प्रकार से हस्तान्तरित की हुई नहीं हैं, न ही उक्त आराजी पर किसी भी संस्था या व्यक्ति से किसी भी प्रकार का ऋण वगैराह ही लिया हुआ हैं, यानि आराजी सम्पूर्ण प्रकार के ऋण एवं भार से मुक्त होने के कारण मेरे परिवार की सहमति से आपको सहर्ष बैचान की गई हैं।"

From the agreement it also reveals that a reference was given about acceptance of a sum of Rs.1,20,000/- by the respondents against proposed sale. All these facts are sufficient to get prima facie satisfied to frame the charges for the offences punishable under Sections 406 and 420 IPC. Learned Additional Sessions Judge, Bali, thus, erred while setting aside the order passed by learned Judicial Magistrate and discharging the respondents.

The revision petition is accordingly allowed. The order dated 27.2.2007 passed by learned Additional Sessions Judge, Bali in Cr. Revision Petition No.14/07 is quashed. The order passed by learned Judicial Magistrate Ist Class, Sumerpur dated 31.10.2006 in Original Criminal Case No.607/2002 framing the charges against the respondents for the offences punishable under Sections 406 and 420 IPC is restored.

(GOVIND MATHUR),J.

Kkm/ps.